

**Testimony of Mr. Jeff Lykins
of The Lykins Companies
Milford, Ohio**

on behalf of the

Ohio Petroleum Marketers Association (OPMA)

and the

Petroleum Marketers Association of America (PMAA)

on

H.R. 688

Before the Subcommittee on Finance and Hazardous Materials

March 20, 1997

PMAA Summary of Testimony

PMAA and its marketer members have worked to secure passage of H.R. 688, as an essential step in helping ensure that states continue to receive the lion's share of federal L.U.S.T. funds. H.R. 688, if passed, would achieve several important objectives. First, the legislation would ensure that states – by statute – receive at least 85 percent of money appropriated by Congress yearly for the L.U.S.T. program. PMAA strongly believes that this provision is critical to states to ensure that they are given the resources necessary to carry out their obligations under the federal L.U.S.T. program mandates. It would be an injustice if states were to lose additional funding for their responsibilities, because they are the very entities which Congress made mostly responsible for carrying out the requirements under RCRA.

If states do not continue to receive the bulk of the money appropriated, the requirements for leaking underground storage tanks would quickly become an unfunded federal mandate. Passage of H.R. 688, would – at the very least – assure states of their share of federal funding, especially as budgetary constraints grow tighter.

Secondly, the bill would give states and tank owners and operators a greater voice in the allocation process. The bill provides that – should E.P.A. want to change the current allocation formula, it must consult with the state administrators and representatives of tank owners and operators. The bill also uses E.P.A.'s current allocation formula and adds an additional criteria that E.P.A. should take into consideration. Under H.R. 688, E.P.A. would be required to also take into account the amount of revenue received into the federal L.U.S.T. fund from a given state.

The bill requires that these criteria be considered “at a minimum”, but does not prevent E.P.A. from adding additional criteria after consultation with the regulated community. PMAA feels that this is an important provision because states are ensured that there will be a variety of criteria considered, including the amount of money their marketers have paid into the fund.

Thirdly, the bill would allow states greater flexibility regarding their use of the funds. PMAA believes that this is essential because, as states face greater demand for the clean-up funds and additional administrative and enforcement costs, Congress should provide the greatest flexibility possible. With the 1998 tank deadlines quickly coming upon us, there will be a peak demand period for funding at the state level. PMAA stands behind the E.P.A. deadline, but also believes that states must be given the maximum amount of funding possible.

Adding to growing concern about the program is the fact that President Clinton proposed a reinstatement of the L.U.S.T. tax. The President proposed this reinstatement, despite the fact that it would take twenty years to spend the money if it continues to be appropriated at its current level. Clearly, President Clinton intends for these funds to go toward deficit reduction and NOT to clean up leaking underground storage tanks.

Every state faces a different situation with regard to their respective program. The bill would allow states to use money for administration; enforcement and to aid – *at a minimum* – tank owners or operators who face financial hardship.

PMAA feels that this provision should be included for a variety of reasons. Primarily, PMAA urges Congress to aid in the clean-up of leaking underground storage tanks because that was the purpose intended when the fund was created. Unfortunately, only 1 percent of the money has been used for actual clean-up – and that has been for the clean-up of orphan tanks where the owner or operator could not be identified. Clearly, there is a community need for the money to be used for clean-ups in certain cases.

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Vice-President, The Lykins Companies
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Thank you Mr. Chairman and members of the Subcommittee. My name is Jeff Lykins and I am the Vice-President of The Lykins Companies in Milford, Ohio. I want to thank the Subcommittee for scheduling a hearing on H.R. 688, as this legislation is of critical importance to petroleum marketers from my state and across the country. I am here today to testify on behalf of the Ohio Petroleum Marketers Association (OPMA) and the Petroleum Marketers Association of America (PMAA).

I would like to first give you a little background on my company. The Lykins Companies, Inc. is a family owned and operated business that serves 32 counties in Ohio; 6 counties in Southeastern Indiana and 11 counties in Northern Kentucky. Overall, The Lykins Companies operates in 15 states. The Lykins Companies sells a total of 126,000,000 gallons of petroleum per year and owns and operates over 80 underground storage tank systems. So, I can assure you, that this issue is of great importance to me, my company and the communities that I serve.

PMAA has been working with Congressional staff for many years now to secure states their fair share of federal funding under the federal Leaking Underground Storage Tank (L.U.S.T.) program and to allow them greater flexibility within the program. PMAA and OPMA are pleased to see that House members are interested in moving forward on this legislation again this year.

PMAA is a federation of 41 state and regional trade groups representing over 9,000 small, independent petroleum marketers. Collectively these 9,000 marketers sell half the gasoline and 60% of the home heating oil consumed in the U.S. annually. OPMA represents approximately 300 marketer companies and 500 companies overall. Overall, OPMA represents marketers who distribute 55% of all the petroleum; 90% of the heating oil and most of the lubricants sold in Ohio.

PMAA and its marketer members have worked to secure passage of H.R. 688, as an essential step in helping ensure that states continue to receive the lion's share of federal L.U.S.T. funds. As you know, H.R. 688, if passed, would achieve several important objectives. First, the legislation would ensure that states – by statute – receive at least 85 percent of money appropriated by Congress yearly for the L.U.S.T. program. PMAA strongly believes that this provision is critical to states to ensure that they are given the resources necessary to carry out their obligations under the federal L.U.S.T. program mandates. It would be an injustice if states were to lose additional funding for their responsibilities, because they are the very entities which Congress made mostly responsible for carrying out the requirements under RCRA.

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take into consideration. Under H.R. 688, E.P.A. would be required to also take into account the amount of revenue received into the federal L.U.S.T. fund from a given state.

The bill requires that these criteria be considered “at a minimum”, but does not prevent E.P.A. from adding additional criteria after consultation with the regulated community. PMAA feels that this is an important provision because states are ensured that there will be a variety of criteria considered, including the amount of money states have paid into the fund.

Thirdly, the bill would allow states greater flexibility regarding their use of the funds. PMAA believes that this is essential because, as states face greater demand for the clean-up funds and additional administrative and enforcement costs, Congress should provide the greatest flexibility possible. With the 1998 tank deadlines quickly coming upon us, there will be a peak demand period for funding at the state level. PMAA stands behind the E.P.A. deadline, but also believes that states must be given the maximum amount of funding possible to fulfill their obligations.

Every state faces a different situation with regard to their respective program. The bill would allow states to use money for administration; enforcement and to aid – *at a minimum* – tank owners or operators who face financial hardship.

PMAA feels that this provision should be included for a variety of reasons. Primarily, PMAA urges Congress to aid in the clean-up of leaking underground storage tanks because that was the purpose intended when the fund was created. Unfortunately, only 1 percent of the money has been used for actual clean-up – and that has been for the clean-up of orphan tanks where the owner or operator could not be identified. Clearly, there is a community need for the money to be used for actual clean-ups.

Using E.P.A.'s figures, approximately 99% of the money appropriated each year goes for administration and enforcement of the L.U.S.T. program and approximately 1% is spent on the clean-up of orphan tanks. For example, that means that, out of the 69.3 million dollars appropriated for the program in FY '95, only about \$693,000 went to clean-up sites (orphan only). The rest of the money appropriated in FY '95 -- \$68,607,000 -- went for the administration and oversight of the program.

Responsible parties will continue to clean-up sites, but PMAA feels strongly that states should be allowed the flexibility to make a decision, in certain cases, to use federal funds for actual clean-ups. As of May, 1995, E.P.A. had cleaned up 880 tanks (partially because they can only use federal money for orphan tanks) and private tank owners had cleaned up over 100,000 tanks. PMAA's position has been and remains that the bulk of clean-ups need to be done in situations where the owner or operator can be identified, but may need financial assistance due to financial stress.

Now, we have a federal fund with over a billion dollars sitting idly, while states and marketers go broke trying to administer the program and clean-up sites. And, the yearly appropriation level continues to dwindle.

To make matters worse, the President has proposed to reinstate the L.U.S.T. tax. If Congress were to spend the existing money from the L.U.S.T. fund at its current appropriation level, there would be enough money in the fund to spend out over the next twenty years -- WITHOUT A NEW TAX. PMAA and OPMA believe that it is clear that the President wants this tax to be reinstated for deficit reduction purposes. PMAA and OPMA strongly oppose a reinstatement of the tax for this

purpose. Until Congress makes a good faith effort to spend down the existing funds, there is no need for a new tax.

Under the Schaefer/Stupak bill, states would be able to spend the money for tank clean-up, administration and enforcement – wherever **they** believe their states could most effectively use the money. I can assure you that PMAA (at least) believes that states are closer to the problem and can make a more competent decision with regard to the L.U.S.T. program and spending the money wisely.

PMAA urges the Subcommittee to approve this important legislation and expedite its consideration by the full Committee and Congress. There has probably never been a greater need to ensure states of their fair share of the federal money and to offer them increased flexibility. On behalf of PMAA and OPMA, I urge your support for H.R. 688 and would be happy to answer any questions you may have.